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INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CRIME

QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME

Report of the Secretary-General

Addendum

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report of the informal meeting on the question of the elaboration of an international convention against organized transnational crime, held at Palermo, Italy, from 6 to 8 April 1997 (see annex), which was organized by the Fondazione Giovanni e Francesca Falcone in cooperation with the Crime Prevention and Criminal Justice Division of the Secretariat.

*E/CN.15/1997/1.

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Annex

REPORT OF THE INFORMAL MEETING ON THE QUESTION OF THE ELABORATION OF AN INTERNATIONAL CONVENTION AGAINST ORGANIZED TRANSNATIONAL CRIME, HELD AT PALERMO, ITALY, FROM 6 TO 8 APRIL 1997

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CONCLUSIONS

1. The informal meeting on the question of the elaboration of an international convention against organized transnational crime, held at Palermo, Italy, from 6 to 8 April 1997, agreed on the conclusions presented below.

2. In view of the dangers that such activity posed to development and democracy and in view of its global nature, an international convention against organized transnational crime would be of immense value to the world community if agreement could be reached on its scope and effect.

3. The draft United Nations framework convention against organized crime (A/C.3/51/7, annex), together with the comments and suggestions submitted on it by Governments (E/CN.15/1997/7/Add.1), as well as other proposals submitted by States participating in the informal meeting and other States, could serve as a good basis for the work of the Commission on Crime Prevention and Criminal Justice in that area. Governments that had not provided their comments were encouraged to do so either before or during the sixth session of the Commission.

4. With respect to the effectiveness and scope of such a convention, a clear and specific definition of organized crime would be essential. Various approaches were possible. The definition could consist of two parts. The first part could address the special features of organized crime that made it a particularly dangerous

form of crime and differentiated it from other types of criminal activity. It ought to be possible for the international community to formulate such a definition, since there was a concept of organized crime that had matured as a result of the multiple international initiatives in that area in recent years. The second part of the definition could reflect the types of criminal activity and the fact that those crimes, when committed by organized criminal groups, were more serious and therefore warranted the priority attention of the international community. The definition ought to be broad enough to permit the convention to retain its usefulness and effectiveness, particularly in view of the diversity and adaptability of organized crime. The definition would increase in importance if an obligation to criminalize organized crime was provided for by the convention. The definition included in the draft text was a useful starting point for the discussion of the international cooperation arrangements to be included in the convention. It would, however, require further elaboration, particularly in connection with legislative action to be taken by Governments. The seriousness and punishability of offences also needed to be considered in arriving at the definition.

5. The following additional types of criminal activity could be considered for inclusion in the second part of the definition, if the list of offences in article 1 was retained:

(a) Fraud, including advance fee fraud;

(b) Money-laundering;

(c) Extortion and usury;

(d) Kidnapping;

(e) Crime involving computer or other technology;

(f) Illicit trafficking in children;

(g) Murder and infliction of injury;

(h) Trafficking in illegal migrants.

6. The convention would not be the appropriate international instrument to deal with the issue of terrorism, which was already the subject of international initiatives currently under way within the United Nations.

7. With respect to article 2, the issue of confiscation merited more attention and needed to be dealt with separately, including in connection with mutual assistance.

8. With respect to article 3, the text was considered relevant. However, the word "consider" could be deleted.

9. With reference to article 4, the importance of availability of information on foreign convictions, prosecution and sentencing was recognized. However, further clarification was needed, for example, with respect to the implications for the swift administration of justice.

10. In connection with article 5, the principle *aut dedere aut judicare* was essential and deserved specific attention. Further clarification was necessary with respect to the relationship between the provisions of subparagraph 1 (b) and (c). At the same time, the question of jurisdiction needed to be further considered, taking into account the types of offence.

11. Considering that the provisions of articles 6-14 were of a more technical nature, the meeting decided to divide itself into two working groups. Working group I, chaired by the representative of Poland, reviewed the provisions of articles 6-10, which dealt essentially with international cooperation in criminal matters. Working group II, chaired by the representative of the United States of America, reviewed articles 11-14, which dealt with operational cooperation, training and other forms of assistance. The reports of working groups I and II, which were reviewed and approved in the plenary, are contained in appendices I and II respectively. It was considered premature at that stage to discuss the provisions contained in articles 15-24.

I. ORGANIZATION OF THE MEETING

12. The informal meeting on the question of the elaboration of an international convention against organized transnational crime was organized by the Fondazione Giovanni e Francesca Falcone in cooperation with the Crime Prevention and Criminal Justice Division of the Secretariat.

A. Opening of the meeting

13. The meeting was opened by Maria Falcone, President of the Fondazione Giovanni e Francesca Falcone. The Minister of the Presidency of Poland, the Deputy-Minister of the Interior of Poland, the Officer-in-Charge of the Crime Prevention and Criminal Justice Division of the Secretariat, the Mayor of Palermo, the President of the Province of Palermo, the President of the Regional Assembly of Sicily and the President of the Region of Sicily also addressed the meeting. Finally, the Minister of the Interior of Italy, on behalf of the President of the Council of Ministers of Italy, gave a presentation.

B. Attendance

14. The meeting was attended by representatives of the following States members of the Commission on Crime Prevention and Criminal Justice: Angola, Argentina, Bolivia, Canada, Egypt, France, Iran (Islamic Republic of), Italy, Japan, Mexico, Nigeria, Philippines, Poland, Russian Federation, Sudan, Sweden, Tunisia, Ukraine, United States of America and Zambia. The United Kingdom of Great Britain and Northern Ireland also attended the meeting. The list of participants is contained in appendix III.

C. Closure of the meeting

15. The meeting was formally closed by the Officer-in-Charge of the Crime Prevention and Criminal Justice Division and by the President of the Fondazione Giovanni e Francesca Falcone.

II. DISCUSSION

16. Liliana Ferraro, Secretary-General of the Fondazione Giovanni e Francesca Falcone, and Pino Arlacchi, Italian Senator, and Honorary President of the Fondazione, acted as chairpersons for the discussion, which centred on the basic orientation, effectiveness and scope of an international convention against organized crime. One of the issues discussed was the usefulness of having a general convention that would rely on principles already existing in other international instruments or having a detailed and specific text covering the various issues related to organized transnational crime. The meeting also discussed the need for a clear definition of organized crime and issues related to extradition, particularly the extradition by a State of its nationals.

17. Maria Falcone, President of the Fondazione Giovanni e Francesca Falcone, stated that her organization had hosted at Palermo in October 1994 an informal preparatory meeting that had been crucial to the success of the World Ministerial Conference on Organized Transnational Crime, held at Naples, Italy, from 21 to

23 November 1994. Both that informal meeting and the World Ministerial Conference would not have been possible without the commitment and vision of the Italian judge Francesco Di Maggio, whose untimely death in October 1996, like that of Giovanni Falcone, had left a void difficult to fill.

18. The Minister of the Presidency of Poland expressed his Government's appreciation for the positive reaction to the draft United Nations framework convention against organized crime, which it had submitted to the fifty-first session of the General Assembly (A/C.3/51/7).

19. The Minister of the Interior of Italy reiterated the commitment of his Government to the principles and ideas of the World Ministerial Conference, particularly those related to the harmonization of domestic legislation, the limitation of bank and financial secrecy in order to prevent and control money-laundering and the need to strengthen international cooperation as well as provide technical assistance in criminal justice matters to developing countries and countries with economies in transition. He confirmed that his Government was committed to the establishment of an international training centre for law enforcement and criminal justice personnel, pursuant to the resolution on that subject adopted by the World Ministerial Conference (A/49/748, annex, chap. I, sect. B).

20. The Minister of Justice of Italy stated that the work of the United Nations on the question of the elaboration of an international convention against transnational organized crime had also started at Palermo, with the convening in October 1994 of the informal preparatory meeting for the World Ministerial Conference. He noted that the draft convention under discussion was only part of a more comprehensive international and domestic effort to better control and prevent crime. While many legal issues still had to be resolved, it was clear that several forms of organized crime could only be tackled within a framework that would give the international community the possibility to deal more effectively with various aspects of the problem, such as money-laundering, bank secrecy, offshore banking and the related problem of corruption. He appealed to Member States and other members of the international criminal justice community to continue to demonstrate their resolve in elaborating the United Nations framework convention against organized crime.

Appendix I

REPORT OF WORKING GROUP I, CHAIRED BY THE REPRESENTATIVE OF POLAND

1. Working group I discussed articles 6-10 of the draft United Nations framework convention against organized crime (A/C.3/51/7, annex), as well as provisions of article 2, paragraph 3, of the draft convention, relating to the confiscation of profits derived from organized crime.

2. The following observations were made with regard to article 6:

(a) The view was expressed that the role of the principle of dual criminality should be carefully considered. Formulations contained in other international conventions should also be taken into consideration for the purpose of specifying the effects of that principle;

(b) Regarding paragraph 4, the view was widely supported that some of the ideas contained in this paragraph were generally acceptable but required further refinement.

3. With regard to article 7, the view was widely held that States should put aside their traditional reservations regarding the extradition of nationals. Several participants, however, pointed out that their constitutional provisions expressly prohibited their nationals from being extradited. Some participants did agree to undertake steps to re-evaluate those provisions, so as to enable their laws and regulations to respond to the rapid globalization of crime. As an interim step, it was proposed to introduce in the convention a model pursued in some countries (e.g. the Netherlands), in accordance with which a person transferred to a requesting State for trial and sentenced in that State would be returned to serve the term in the country of his or her nationality, with the proviso that the penalty should, where possible, be fully and properly executed in the requested State, in compliance with international norms and standards. In addition, the general principle *aut dedere aut judicare* would need to be dealt with in the draft provisions concerning extradition.

4. A proposal was made to allow reservations to be made with respect to article 7. Permitting reservations to be made with respect to one provision, however, could encourage parties to make reservations with respect to other substantive provisions of the convention and thus weaken its efficacy. Finally, it was suggested that the concept of extradition of nationals, although acceptable in bilateral treaties, should be carefully considered before being introduced into a multilateral treaty.

5. With regard to article 8, it was emphasized that the concept it contained was not new. The European Convention on the Suppression of Terrorism (1997, article 2),[a] opened the possibility for contracting States not to consider certain offences as political. Contrary to the present draft, the 1977 Convention contained an exhaustive list of offences which for the purpose of extradition should not be regarded as political offences. It was, therefore, felt that, although it was too early to determine the validity of that principle for the present draft convention, its scope would depend on the list of offences to be included in the draft. Some delegations felt that the notion contained in article 8, paragraph 1, was essential to the draft convention. The attention was drawn to similar provisions contained in the draft convention on terrorist bombings that was being elaborated by the ad hoc committee established by the General Assembly in its resolution 51/210 of 17 December 1996.

6. In respect of article 8, paragraph 2, its formulation was widely supported; however, the view was expressed that there should be some mention of prohibition of the imposition of the death penalty by a requesting State. Others felt that, since those were general conditions, they should be left out of the present text. Consequently, for the time being, the present formulation could be retained.

7. With regard to article 9 there were no comments.

8. With regard to article 10, there was agreement that its present formulation should benefit, as much as possible, from the provisions of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988,[b] in particular, article 7, paragraph 12. It was also felt that the question of the admissibility of evidence should be considered.

9. In further reviewing the text, participants suggested emphasizing the need to establish a central authority to facilitate expeditious handling and processing of requests for mutual assistance.

10. Furthermore, the need to address the question of limiting bank secrecy was stressed. Therefore, the text would benefit from a provision stating that each contracting State should ensure that rules on bank secrecy and other relevant administrative, commercial or fiscal provisions for confidentiality did not prejudice investigations carried out within the scope of the convention and domestic legislation originating therefrom. It might be useful to consider including in the convention the following text, which takes into account the provisions of the 1988 Convention: "Each Contracting State shall adopt such measures and afford one another the highest degree of legal assistance to improve their ability to trace and identify illicit proceeds and to execute without delay foreign requests of seizure and confiscation submitted in accordance with the provisions of the present Convention."

11. With regard to article 2, paragraph 3, of the draft convention, some participants shared the view that the notion of confiscation of illegal proceeds of crime was extremely important. Therefore, more consideration should be given to it being reformulated. In particular, more attention should be given to the question of identification of proceeds for eventual confiscation. At the same time, it was stressed by several participants that the interest of victims, including the right to compensation, should be duly taken into account. The question of asset-sharing was also raised by some participants.

12. Finally, it was felt that the proposed convention should respond to the need of developing countries and countries with economies in transition to receive assistance and support, directly or through competent international or regional organizations, in order to meet obligations envisaged in the proposed convention.

Notes

[a]United Nations, *Treaty Series*, vol. 1137, No. 17828.

[b]*Official Records of the United Nations Conference for the Adoption of a Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 25 November-20 December 1988*, vol. I (United Nations publication, Sales No. E.94.XI.5).

Appendix II

REPORT OF WORKING GROUP II, CHAIRED BY THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA

1. Working group II, in reviewing articles 11-14 of the draft United Nations framework convention against organized crime, was of the opinion that specific provisions for cooperation in operational, training and other matters, alternative provisions could be considered.

2. Regarding article 11, the working group thought that one approach could more adequately deal with the issues of operational cooperation. There was need for close cooperation between States, consistent with their domestic legal and administrative systems and fundamental human rights, to enhance the effectiveness of law enforcement action to combat offences to which a convention would apply. That could include effective measures: (a) to designate, for the purposes of carrying out the cooperation and assistance provided for under the convention, including the making and receiving of requests for cooperation and assistance, central authorities that would communicate directly with one another; (b) to establish and maintain channels of communication between competent authorities, agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of the offences, including, if appropriate, links with other criminal activities; (c) to cooperate in conducting inquiries with respect to the identity, whereabouts and activities of persons suspected of involvement in the offences or persons suspected of links with such offences and the movement of proceeds or property derived from the commission of such offences; (d) to establish, in appropriate cases, joint teams and operations, taking into account the need to protect the security of persons and operations and subject to appropriate safeguards; (e) to provide, when appropriate, necessary items or quantities of substances and materials for analytical or investigative purposes; (f) to establish arrangements for electronic surveillance, undercover operations and controlled deliveries, with a view to gathering evidence and taking legal action against persons involved in the offences, with due regard for the need for legal protection of personal data as provided for in domestic legislation and relevant international instruments; (g) to provide appropriate protection both for persons who had given or agreed to give information or evidence or who participated or who had agreed to participate in an investigation, prosecution or trial of a relevant offence and also for the relatives and associates of such persons who would require protection because of risks to their security; and to provide appropriate mutual arrangements for the protection of witnesses and other persons in danger; (h) to permit the competent authorities, when considering punishment, to consider as a mitigating factor the extent of cooperation provided by an accused in the investigation and prosecution of other persons or the ability and intention of the accused to provide such cooperation; (i) to facilitate effective coordination between competent authorities, agencies and services and to promote the exchange of personnel and other experts, including the posting of liaison officers, prosecutors and magistrates; and (j) in the case of existing bilateral and multilateral agreements, to strengthen efforts to maximize operational and training activities within the United Nations and the International Criminal Police Organization (Interpol), as well as within other relevant bilateral and multilateral agreements or arrangements.

3. In view of the broad range of needs for cooperation between States for the prevention and control of organized crime, the working group thought that new provisions could usefully supplement the existing text. Such provisions could require States, to the extent necessary, to initiate, develop or improve specific training programmes for their law enforcement personnel, including prosecutors and investigating magistrates, and other personnel charged with the prevention, investigation and prosecution of offences to which the convention would apply. Such programmes could deal, in particular, with: (a) methods used in the prevention, investigation and prosecution of the offences; (b) techniques used by persons suspected of involvement in the offences; (c) detecting and monitoring the movement of proceeds and property derived from and instrumentalities used in the offences, as well as methods used for the transfer, concealment or disguise of such proceeds, property and instrumentalities; (d) the collection, preservation and presentation of evidence; and (e) modern law enforcement

techniques. Further measures might require States to plan and implement research and training programmes designed to share expertise in the relevant areas and, when appropriate, use regional and international conferences and seminars to promote cooperation and stimulate discussion on problems of mutual concern. Other techniques could be promoted for mutual education that would facilitate extradition and mutual legal assistance, including language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. With respect to article 12, the working group preferred a reference to common data banks, instead of to a single one (paragraph 3), giving the fullest possible protection to sensitive information received from other countries.

5. Considering the crucial importance of financial investigations designed to target the wealth of organized crime and thereby deprive it of one of the most important means of its power, the working group agreed that measures could be implemented to detect and monitor the physical transportation of cash and bearer negotiable instruments at the border, subject to strict safeguards to ensure proper use of information thereby obtained and without impeding in any way the freedom of movement of legitimate capital. In order to improve understanding and information on the detection of financial networks linked to transnational organized crime, measures could be taken to gather financial information and, as much as possible, facilitate the exchange between law enforcement agencies and regulatory bodies.

6. The provisions on cooperation could be broadened so as to cover other forms of cooperation that did not fall under any easily identifiable category, for example, providing for close cooperation in the prevention, investigation and prosecution of the offences concerned. In particular, such provisions could invite States, in accordance with or subject to their domestic laws or pursuant to bilateral or multilateral agreements or arrangements: (a) to take all appropriate measures to prevent preparation in their respective territories for the commission of those offences outside their territories; (b) to exchange information in accordance with their national law; and (c) to coordinate administrative and other measures to be taken, as appropriate, to prevent the commission of offences set forth in the convention.

7. The working group was of the opinion that, with the inclusion of the provisions mentioned above, article 13 could be superseded.

8. The working group noted that a new provision on the transfer of proceedings could be added to the text, perhaps in connection with an article on the principle *aut dedere aut judicare*.

9. Finally, regarding article 14, the working group considered it important to make reference to other international instruments and to the relation between their implementation and that of the proposed convention.

Appendix III

LIST OF PARTICIPANTS

Angola

Joao Vemba Coca, Procuratoria Geral da República, Luanda

Argentina

Eugenio Curia, Jefe de la Unidad de Asuntos Internacionales, Ministerio de Justicia

Bolivia

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Canada

Richard Saint Martin, Conseiller, Ambassade du Canada, Rome

Egypt

Ahmed Sabry Bazina, Ministère de la justice

France

Bruno Guerquin, Ministère des affaires étrangères
Philippe Labregere, Ministère de la justice

Iran (Islamic Republic of)

Bahram Badiozamani, Second Secretary, Ministry of Foreign Affairs

Italy

Giorgio Napolitano, Minister of the Interior
Giovanni Maria Flick, Minister of Justice
Gioacchino Polimeni, Ministry of Justice
Franca Zacco, Ministry of Justice

Japan

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Hideaki Mori, Permanent Mission of Japan to the United Nations (Vienna)
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Philippines

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Marek Czecharowski, Under-Secretary of State, Ministry of Justice
Janus Szymanski, Under-Secretary of State, Ministry of Interior and Administration
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Michael Rumble, Home Office
Jonathan Duke-Evans, Home Office
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Laurie Barsella, American Embassy, Rome

Zambia

Emmanuel Katongo, Permanent Mission of Zambia to the United Nations (Geneva)